IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1581 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STEEL TRADERS & 1 - Appellant(s)
Versus
UNION OF INDIA & 1 - Defendant(s)

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Appearance :

MR HEMANT S SHAH for Appellant(s) : 1 - 2.
MR JS YADAV for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants – original plaintiffs have challenged the judgment and decree passed by the learned City Civil Court,

Ahmedabad, in dismissing the said suit.

2. The appellants filed the aforesaid Suit bearing Civil Suit No.1366 of 1982 in the City Civil Court, Ahmedabad, for a declaration that the defendants – Tele-communication Department and the Union of India are not entitled to disconnect the telephone connection of Telephone Nos.362776. 360030 and 360048 standing in the name of the plaintiff No.1 – firm, till plaintiff No.1 is wound up and/or till the distribution of the assets and/or adjustment of the assets of the firm by and between the partners of the plaintiff No.1 – firm. They have also prayed for consequential relief of perpetual injunction restraining the defendants from disconnecting the aforesaid telephones of the plaintiff No.1 – firm on the basis of the show-cause notice under Rule – 429 of the Indian Telegraph Rules.

3. The suit was resisted by the defendants. The Written Statement was filed at Exh.10. The suit

was resisted on the ground that the learned City Civil Court has no jurisdiction to try and/or entertain the suit. It was also submitted that the aforesaid telephones were in the name of the partnership firm. The learned trial Court framed the issues vide Exh.18. Ultimately, considering the provisions of the Indian Telegraph Rules, more particularly, Rule – 429 the learned trial Court has held that the defendants would be justified in disconnecting the aforesaid telephones as the user of these telephones was by a person other than the subscriber. The trial Court has also held on appreciation of evidence that nothing is on record that the rights are assigned in favour of the plaintiff No.2 in his individual capacity by the partnership firm and accordingly, the learned trial Court dismissed the suit.

4. It is an admitted position that the aforesaid telephones were in the name of the partnership firm and was being used by the plaintiff No.2. Nothing was brought on record to show that the

rights were assigned in favour of the plaintiff No.2 in his individual capacity. Inspite of that, the telephones were being used by the plaintiff No.3. Considering the provisions of Rule – 429 of the Indian Telegraph Rules, the learned trial Court has rightly held that the Rule – 429 of the Indian Telegraph Rules would be attracted and the defendants would be justified in disconnecting the aforesaid telephones as the user of the said telephones was by a person other than the subscriber. On going through the Records & Proceedings and considering the above, it cannot be said that the learned trial Court has committed any error in dismissing the suit. This Court is in complete agreement with the reasoning and findings given by the learned trial Court.

5. For the reasons stated above, the appeal is dismissed, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.